

**A Pendaftar Muallaf Wilayah Persekutuan v Lee Chang Yong &
Ors and another appeal**

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NOS W-01(A)-658–11 OF 2018 AND W-01(A)-659–11 OF 2018
MOHAMAD ZABIDIN, NANTHA BALAN AND
NORDIN HASSAN JJCA
26 NOVEMBER 2021

C *Administrative Law — Judicial review — Application for — Judicial review of*
decision of Registrar of Muallaf, Wilayah Persekutuan in issuing Certificates of
Conversion to Islam without consent of non-converting parent — Appeals against
D *decision to allow application — Whether consent of both parents required before*
Certificates of Conversion to Islam in respect of underaged children could be issued

E *Civil Procedure — Judgments and orders — Stare decisis — Judicial review of*
decision of Registrar of Muallaf, Wilayah Persekutuan in issuing Certificates of
Conversion to Islam without consent of non-converting parent — Appeals against
decision to allow application — Whether High Court and Court of Appeal bound
by Federal Court decision in Indira Gandhi alp Mutho v Pengarah Jabatan Agama
Islam Perak & Ors and other appeals [2018] 1 MLJ 545 based on principle of stare
decisis

F The first respondent and Teng Wai Yee (‘Aleena’) were married and blessed with
two children (AB(1) and AB(2)), both of which were underaged at the material
time. The parties were in the process of divorce and during that period, Aleena
had converted to Islam. Subsequently, Aleena had procured the conversion of
G the two children to Islam without the consent of the first respondent. The
Certificates of Conversion to Islam (‘the COC’) were issued on the same day by
the registrar of Muallaf, Wilayah Persekutuan (‘the appellant’). In respect of the
divorce petition by the first respondent, at the appeal stage, the Court of Appeal
set aside the High Court’s order and ordered that the sole guardianship,
H custody, care and control of both the children be given to the first respondent.
The first respondent had also filed a judicial review application against the
appellant. At the end of the case, the High Court granted the order of certiorari
to quash the children’s conversion to Islam, the issuance of the COC and an
order of mandamus to cancel the registration of the children as converts to
I Islam premised on the fact that the issue before the court had already been
decided by the Federal Court in the case of *Indira Gandhi alp Mutho v Pengarah*
Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018]
3 CLJ 145 (‘Indira Ghandhi’), as such, the court was bound by the said
decision based on the doctrine of stare decisis. Aggrieved by the decision, the

appellant and Aleena filed the present appeals. The issues arose were: (a) whether the consent of both parents ie, the first respondent and Aleena was required, before the COC in respect of their underaged children could be issued; (b) whether the decision in *Indira Ghandi* was the ratio decidendi of the case which warranted strict adherence or mere per incuriam which was not binding upon the High Court and the Court of Appeal.

Held, dismissing both the appeals with no order as to costs:

- (1) The Federal Court in *Indira Ghandi* in answering a specific question of law, had considered the relevant facts and applied the law as could be seen from paragraphs 142 until 181 of the grounds of judgment. All relevant statutory provisions and previous Federal Court decisions on the same issue including *Subashini a/p Rajasingam v Saravanan all Thangathoray and other appeals* [2008] 2 MLJ 147; [2008] 2 CLJ 1 ('Subashini') had been analysed and considered before the decision on the issue was decided. As such, the decision in *Indira Ghandi* that consent of both parents were required before the COC could be issued was the ratio decidendi of the case. The appellant's argument that the facts in *Indira Ghandi* was distinguishable from the present case was untenable as the main facts in both cases involved unilateral conversion of the children which was the main question for determination of the courts. In the circumstances and based on the principles of stare decisis, the High Court and the Court of Appeal were bound by the decision in *Indira Ghandi*. The appellant's submission that the law at the material time was as decided in *Subashini* and not the decision in *Indira Ghandi* was misconceived as it was trite law that the latest decision of the Federal Court superseded its earlier decision (see paras 28, 30–31 & 33–34).
- (2) It was undisputed fact that the children's conversion to Islam was without the consent of the first respondent, the father of the children and as such, the High Court judge was correct in granting an order of certiorari to quash the said conversion, the issuance of the COC and an order of mandamus to compel the appellant to cancel the registration of the children as converts to Islam (see para 35).

[Bahasa Malaysia summary]

Responden pertama dan Teng Wai Yee ('Aleena') telah berkahwin dan dikurniakan dua orang anak (AB(1) dan AB(2)), yang kedua-duanya masih di bawah umur pada masa material. Kedua-dua pihak dalam proses penceraian dan dalam tempoh tersebut, Aleena telah memeluk agama Islam. Setelah itu, Aleena telah mendapatkan penukaran agama kedua-dua anak tersebut kepada agama Islam tanpa kebenaran responden pertama. Sijil Pemeluk Islam ('SPI') telah dikeluarkan pada hari yang sama oleh pendaftar Muallaf, Wilayah Persekutuan ('perayu'). Berkenaan dengan petisyen cerai oleh responden pertama, pada peringkat rayuan, Mahkamah Rayuan mengeneipkan perintah

- A Mahkamah Tinggi dan memerintahkan supaya pemeliharaan, penjagaan dan kawalan tunggal kedua-dua anak tersebut diberikan kepada responden pertama. Responden pertama juga telah memfailkan permohonan semakan kehakiman terhadap perayu. Pada akhir kes, Mahkamah Tinggi memberikan perintah certiorari untuk membatalkan penukaran agama kedua-dua anak tersebut kepada Islam, pengeluaran SPI dan perintah mandamus untuk membatalkan pendaftaran kedua-dua anak tersebut sebagai pemeluk agama Islam berdasarkan fakta bahawa isu di hadapan mahkamah telah pun diputuskan oleh Mahkamah Persekutuan dalam kes *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 ('Indira Ghandhi'), oleh itu, mahkamah terikat dengan keputusan tersebut berdasarkan doktrin stare decisis. Terkilan dengan keputusan tersebut, perayu dan Aleena memfailkan rayuan-rayuan semasa. Isu-isu yang timbul ialah: (a) sama ada persetujuan kedua-dua ibu bapa iaitu, responden pertama dan Aleena diperlukan, sebelum SPI berkenaan dengan anak-anak mereka yang masih di bawah umur boleh dikeluarkan; (b) sama ada keputusan dalam *Indira Ghandi* adalah ratio deidendi kes yang memerlukan pematuhan ketat atau hanyalah per incuriam yang tidak mengikat Mahkamah Tinggi dan Mahkamah Rayuan.
- E **Diputuskan**, menolak kedua-dua rayuan tanpa perintah untuk kos:
- (1) Mahkamah Persekutuan di dalam *Indira Ghandi* dalam menjawab persoalan undang-undang yang khusus, telah mempertimbangkan fakta yang relevan dan mengguna pakai undang-undang seperti yang boleh dilihat dari perenggan 142 hingga 181 alasan penghakiman. Semua peruntukan undang-undang yang berkaitan dan keputusan Mahkamah Persekutuan terdahulu mengenai isu yang sama termasuk *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147; [2008] 2 CLJ 1 ('Subashini') telah dianalisa dan dipertimbangkan sebelum keputusan mengenai isu tersebut diputuskan. Oleh itu, keputusan dalam *Indira Ghandi* bahawa persetujuan kedua-dua ibu bapa diperlukan sebelum SPI boleh dikeluarkan adalah ratio decidendi kes. Hujahan perayu bahawa fakta dalam *Indira Ghandi* boleh dibezakan daripada kes semasa adalah tidak boleh dipertahankan kerana fakta utama dalam kedua-dua kes melibatkan penukaran agama anak-anak secara unilateral yang menjadi persoalan utama untuk penentuan mahkamah. Dalam keadaan dan berdasarkan prinsip stare decisis, Mahkamah Tinggi dan Mahkamah Rayuan terikat dengan keputusan di dalam kes *Indira Ghandi*. Hujahan perayu bahawa undang-undang pada masa material adalah seperti yang diputuskan dalam *Subashini* dan bukannya keputusan dalam *Indira Ghandi* adalah salah anggap kerana telah menjadi undang-undang yang mantap bahawa keputusan terkini Mahkamah Persekutuan menggantikan keputusannya yang terdahulu (lihat perenggan 28, 30–31 & 33–34).

- (2) Fakta yang tidak dapat dipertikaikan adalah bahawa penukaran agama kedua-dua anak tersebut kepada Islam adalah tanpa kebenaran responden pertama, bapa kepada anak-anak tersebut dan oleh itu, hakim Mahkamah Tinggi adalah betul dalam memberikan perintah certiorari untuk membatalkan penukaran tersebut, pengeluaran SPI tersebut dan perintah mandamus untuk memaksa perayu membatalkan pendaftaran anak-anak tersebut sebagai pemeluk agama Islam (lihat perenggan 35).]

Cases referred to

- Dalip Bhagwan Singh v PP* [1998] 1 MLJ 1, FC (refd) A
Dato' Tan Heng Chew v Tan Kim Hor [2006] 2 MLJ 293; [2006] 1 CLJ 577, FC (refd) B
Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (refd) C
Kerajaan Malaysia & Ors v Tay Chai Huat [2012] 3 MLJ 149; [2012] 3 CLJ 577, FC (refd) D
Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor [2021] 1 MLJ 750; [2021] 2 CLJ 579, FC (refd)
Subashini a/p Rajasingam v Saravanan all Thangathoray and other appeals [2008] 2 MLJ 147; [2008] 2 CLJ 1, FC (refd) E
Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases [2021] 3 MLJ 759; [2021] 5 CLJ 581, FC (refd)

Legislation referred to

- Administration of Islamic Law (Federal Territories) Act 1993 s 85 F
 Law Reform (Marriage and Divorce) Act 1976
 Rules of Court 2012 O 53 rr 1, 8(2)

Appeal from: Application for Judicial Review No WA-25-105-06 of 2016 (High Court, Kuala Lumpur) G

- Nizam Bashir (Zulkifli Che Yong and Mohamad Ikmal Ibrahim with him) (Zulkifli Yong Azmi & Co) in Appeal No W-01(A)-658-11 of 2018 for the appellant.*
Arham Rahimy bin Hariri (Rohani Ibrahim with him) (Amin, Nizam & Rohani) in Appeal No W-01(A)-659-11 of 2018 for the appellant. H
K Shanmuga (Honey Tan Lay Ean, Tay Kit Hoo and Kee Hui Yee with him) (Tan Law Practice) in Appeal Nos W-01(A)-658-11 of 2018 and W-01(A)-659-11 of 2018 for the first respondent.
Nik Isfahanie Tasnim bt Wan Ab Rahman (Senior Federal Counsel, Attorney General's Chambers) in Appeal Nos W-01(A)-658-11 of 2018 and W-01(A)-659-11 of 2018 for the second, third and fourth respondents. I
Tan Kim Kiek watching brief on behalf of Bar Council Malaysia.

A Nordin Hassan JCA:

[1] This is an appeal against the decision of the High Court dated 16 October 2018 allowing partly the prayer sought by the first respondent in his application for judicial review. The prayers sought are as follows:

- B**
- (i) an order of certiorari pursuant to O 53 r 8(2) of the Rules of Court 2012 to quash the conversion of religion of AB(1) and AB(2), the children of the first respondent and AA and the decision by the appellant in appeal No WA-01(A)-658–11 of 2018 in issuing the certificate of conversion to Islam ('kad akuan agama Islam') both dated 11 May 2016;
- C**
- (ii) an order of prohibition pursuant to O 53 r 1 of the Rules of Court 2012 to prohibit the appellant, its officer or agent from registering the children as *muallaf* (muslim) under the relevant enactments;
- D**
- (iii) an order of mandamus to compel the appellant and the second respondent in Appeal No WA-01(A)-659–11 of 2018 to cancel the registration of the children as converts to Islam in the register of converts; and
- E**
- (iv) alternatively, a declaration that the certificates of conversion to Islam are null and void.

[2] The High Court judge only allowed prayer (i) and (iii) of the first respondent's application with no order as to costs.

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[3] There are two appeals filed against this decision by the appellants namely in Appeal No W-01(A)-658–11 of 2018 and No W-01(A)-659–11 of 2018.

G BACKGROUND FACTS

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[4] On 23 June 2006, the first respondent and TWY ('AA'), were married under the Law Reform (Marriage and Divorce) Act 1976. Out of the marriage, they have two children, AB(1) and AB(2). At the material time, AB(1) was eight years and one month old, whilst AB(2) was three years and seven months old and as the children are underaged, we will not disclose their real name. Thereafter, on 17 december 2015, a joint petition for divorce was filed at Shah Alam High Court. In the meanwhile, AA converted to Islam on 29 December 2015.

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[5] On 21 January 2016, by consent of both parties, a decree nisi was granted by the High Court which was made absolute in three months. There was also an interim order granted by the court on 29 March 2016, to restrain AA from converting or attempting to convert the children to Islam.

[6] Next, on 20 April 2016, the first respondent filed an application for variation of the decree nisi and on 10 May 2016 a consent order was recorded on the following terms:

- (a) the divorce petition filed by parties be struck out;
- (b) the decree nisi be set aside; and
- (c) the interim order dated 29 March 2016 be set aside.

[7] Subsequently, on 11 May 2016, AA procured the conversion of the two children to Islam without the consent of the first respondent. The certificates of conversion to Islam were issued on the same day by Pendaftar Muallaf Wilayah Persekutuan, the appellant in Appeal No WA- 01(A)-658–11 of 2018.

[8] On the same day, 11 May 2016, the first respondent filed a divorce petition at Shah Alam High Court and on 6 June 2016, by consent, an interim order was granted that except for the process of registration of the conversion of the children, AA is restrained from changing or attempting to change the children's religion to Islam.

[9] As regards the first respondent's divorce petition, on 27 April 2018, the Shah Alam High Court made the following orders:

- (a) the first respondent's visitation rights to the children; and
- (b) that AA be given the sole custody, care and control of both the children.

[10] However, on appeal, the Court of Appeal on 13 September 2018 set aside the order of the High Court and made an order that the first respondent is given the sole guardianship, custody, care and control of both the children.

[11] Finally, on 16 October 2018, the High Court allowed in part the prayer in the first respondent's judicial review application as alluded to earlier and hence the present appeal before us.

THE CORE ISSUE

[12] The core issue in the present appeal is essentially whether the consent of both parents ie, the first respondent and AA is required, before the certificate of conversion to Islam in respect of their underaged children can be issued.

[13] Her Ladyship at the High Court granted the order of certiorari to quash the children's conversion to Islam, the issuance of the certificates of conversion and an order of mandamus to cancel the registration of the children as converts to Islam premised on the fact that the issue before the court had already been

A decided by the Federal Court in the case of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 ('Indira Ghandhi'). In the circumstances, Her Ladyship decided she was bound by the said decision based on by the doctrine of stare decisis.

B
[14] Before us, the learned counsel for the appellants submitted, inter alia, that the decision in *Indira Ghandi* is distinguishable on its facts as in that case, s 96 of the Administration of the Religion of Islam (Perak) Enactment 2004 was not complied with. Section 96(1) of the Enactment requires the children to be present before the registrar and utter the two clauses of the affirmation of faith before the certificate of conversion can be issued. These requirements were not fulfilled in *Indira Ghandi*. In contrast, in the present case, all the requirements under the relevant provision of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), in particular s 85 had been complied with. For ease of reference, s 85 provides:

Section 85 Requirements for Conversions

(1) The following requirements shall be complied with for a valid conversion of a person to Islam —

- E (a) the person must utter in reasonably intelligible Arabic the two clauses of Affirmation of Faith;
- (b) at the time of uttering the two clauses of the affirmation of faith the person must be aware that they mean 'I bear witness that there is no god but Allah and I bear witness that the Prophet Muhammad S.A.W is the Messenger of Allah'; and
- F (c) the utterance must be made of the person's own free will.

G [15] Counsel for the appellant argued that the Federal Court decision on the same issue in the case of *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147; [2008] 2 CLJ 1, ('Subashini') should be followed. In the circumstances, it was the appellants' contention that the decision in *Indira Ghandi* is per incuriam and as such is not binding upon the High Court and this court.

H [16] In *Subashini*, the Federal Court held that either husband or wife has the right to convert a child of the marriage to Islam. Nik Hashim FCJ explained this decision in the following manner:

I [25] The wife complained that the husband had no right to convert either child of the marriage to Islam without the consent of the wife. She said the choice of religion is a right vested in both parents by virtues of arts 12(4) and 8 of the FC and s 5 of the Guardianship of Infants Act 1961.

[26] After a careful study of the authorities, I am of the opinion that the complaint

is misconceived. *Either husband or wife has the right to convert a child of the marriage to Islam.* The word ‘parent’ in art 12(4) of the FC, which states that the religion of a person under the age of 18 years shall be decided by his parent or guardian, means a single parent. In *Teoh Eng Huat v Kadhi, Pasir Mas & Anor* [1990] 2 MLJ 300; [1990] 2 CLJ 11; [1990] 1 CLJ Rep 277, Abdul Hamid Omar LP, delivering the judgment of the Supreme Court, said at p 302 (MLJ); p 14 (CLJ); p 280 (CLJ Rep):

In all the circumstances, we are of the view that in the wider interests of the nation, no infant shall have the automatic right to receive instructions relating to any other religion than his own without the permission of the parent or guardian. Further down, His Lordship continued: We would observe that the appellant (the father) would have been entitled to the declaration he had asked for. However, we decline to make such declaration as the subject is no longer an infant. Therefore, art 12(4) must not be read as entrenching the right to choice of religion in both parents. That being so, art 8 is not violated as the right for the parent to convert the child to Islam applies in a situation where the converting spouse is the wife as in *Nedunchelian*, and as such, the argument that both parents are vested with the equal right to choose is misplaced. Hence the conversion of the elder son to Islam by the husband albeit under the Selangor Enactment did not violate the FC. Also reliance cannot be placed on s 5 of the Guardianship of Infants Act 1961 which provides for equality of parental rights since s 1(3) of the same Act has prohibited the application of the Act to such person like the husband who is now a Muslim. (See *Shamala Sathiyaseelan v Dr Jeyaganesh C Mogarajah & Anor* [2004] 2 MLJ 648; [2004] 2 CLJ 416) (Emphasis added.)

[17] In the same case, Abdul Aziz Mohamad FCJ expressed the view as follows:

[157] Construing *Teoh Eng Huat* to mean that by virtue of the said cl (4) the conversion of a non-Muslim person under eighteen requires the consent of his ‘parent or guardian’, the wife argues that, by virtue of the rule of construction that the singular includes the plural, ‘parent’ in cl (4) must be read in the plural to mean both parents. *In my opinion, in the case of the word ‘parent’ in cl (4) and in the said ss 95 and 117, it is improper to begin construing it by applying the said rule of construction and thereby reading it as ‘parents’. One has to begin by construing what is the meaning of ‘parent’. The ordinary meaning is ‘a father or mother’. See, for example, the Concise Oxford Dictionary. So is the legal meaning. Black’s Law Dictionary (7th Ed), gives the meaning as ‘the lawful father or mother of someone’. The relevant phrase in cl (4) has, therefore, to be read as ‘by his father or mother or guardian’. The same applies to the two sections. The relevant words have to be read as ‘if ... his father or mother or guardian consents’. Either the father or mother will do, not both.* With that, the question of applying the rule about the singular including the plural no longer arises because ‘mothers or fathers’ would be out of the question. The Bahasa Malaysia text of the Administration Act, which is the authoritative text, in fact says in s 117 ‘jika ... ibu atau bapa atau penjaganya mengizinkan’. (Emphasis added.)

[18] Reverting to *Indira Ghandi*'s case, a specific question of law on the same issue discussed above was posed before the court which reads:

3. *Whether the mother and the father (if both are still surviving) of a child of a civil marriage must consent before a certificate of conversion to Islam can be issued in respect of that child.*

[19] After having considered the relevant laws and authorities including the decision in *Subashini*, Zainun Ali FCJ held as follows:

[175] Based on a purposive interpretation of art 12(4) read with the Eleventh Schedule of the Federal Constitution, and on an application of ss 5 and 11 of the GIA, *it is concluded that the consent of both the appellant and her husband are required before a certificate of conversion to Islam can be issued in respect of the children. The third question is thus answered in the affirmative.* (Emphasis added.)

[20] Clearly, the latest Federal Court decision in *Indira Ghandi* has decided that if both parents are still surviving, both their consent are required before certificate of conversion to Islam can be issued.

THE DOCTRINE OF STARE DECISIS

[21] In determining the issue at hand, it is instructive to make reference to the trite principle of stare decisis and its application. There is a plethora of cases on this doctrine and the oft-quoted case is the Federal Court case of *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577, where Mohd Ghazali Yusoff FCJ lucidly explained the principle as follows:

[50] A precedent can be defined as a judicial decision which serves as a rule for future determinations in similar or analogous cases. *A precedent or authority is a legal case establishing a principle or rule that a court or other judicial body adopts when deciding in subsequent cases with similar issues or facts. A precedent that must be applied or followed is known as a binding precedent.* I would think that this court must follow its own proclamations of law made earlier on other cases and honour these rulings. After all, this court is the highest court in the country. *The doctrine of precedent, a fundamental principle of English law, is a form of reasoning and decision making formed by case law. Precedents not only have persuasive authority but also must be followed when similar circumstances arise. Any principle announced by a higher court must be followed in later cases.* In short, *the courts are bound within prescribed limits by prior decisions of superior courts. Judges are also obliged to obey the set up precedents established by prior decisions. This legal principle is called stare decisis.* Adherence to precedent helps to maintain a system of stable laws. Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. *The doctrine of judicial precedent involves an application of the principle of stare decisis, ie, to stand by the decided. In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides consistency and predictability in the law.* (Emphasis added.)

[22] In the same case, the importance of strict adherence to this doctrine was emphasized in the following words:

[35] ... *It is of supreme importance that people may know with certainty what the law is, and this end can only be attained by a loyal adherence to the doctrine of stare decisis.* (Emphasis added.)

[23] In a recent Federal Court case of *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759; [2021] 5 CLJ 581, the importance of strict adherence to the doctrine was reiterated as follows:

[211] *The importance of adherence to the doctrine of stare decisis lies in the fact that it has become the cornerstone of the common law practiced in this country. It is fundamental that decisions of the courts, especially of the apex court, ought to be consistent, in the interests of finality and certainty in the law.* Otherwise, the public and lawyers who have regulated their affairs in reliance on a ratio decidendi before it is overruled will face difficulty and confusion in organising their affairs around such judgments and this in turn will affect public confidence in the Judiciary (see *Dato' Tan Heng Chew v Tan Kim Hor* [2006] 2 MLJ 293; [2006] 1 CLJ 577; *Public Prosecutor V Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276; [1980] 1 LNS 58. See also *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577). (Emphasis added.)

[24] Further, in an earlier Federal Court case of *Dato' Tan Heng Chew v Tan Kim Hor* [2006] 2 MLJ 293; [2006] 1 CLJ 577 Steve Shim CJSS stated:

[2] ... *It is axiomatic to state that the doctrine of stare decisis has become the cornerstone of the common law system practised in this country. It is fundamental to its existence and to the rule of law. It has attained the status of immutability.* In *Public Prosecutor v Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 277, Mr Justice Chang Min Tat had occasion to restate the doctrine in words which are poignantly clear when he said:

It is ... necessary to reaffirm the doctrine of stare decisis which the Federal Court accepts unreservedly and which it expects the High Court and other inferior courts in a common law system such as ours to follow similarly.

[3] *Judicial hierarchy must be observed in the interests of finality and certainty in the law and for orderly development of legal rules as well as for the courts and lawyers to regulate their affairs. Failure to observe judicial precedents would create chaos and misapprehensions in the judicial system.* This fact was certainly borne in mind by the Court of Appeal in *Periasamy s/o Sinnappan & Anor v Public Prosecutor* [1996] 2 MLJ 557 wherein Gopal Sri Ram JCA said:

We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well entrenched doctrine of stare decisis. We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.

- A [4] The observation is but a stark reminder to judges of the importance of adhering to the doctrine ... (Emphasis added.)
- B [25] The next pertinent question here is whether the decision in *Indira Ghandi* as alluded to earlier is the ratio decidendi of the case which warrants strict adherence or mere per incuriam which is not binding upon the High Court and this court.
- C [26] As regards the ratio decidendi of a case, it is apposite to refresh our memory to this principle of law by referring to *Tay Chai Huat* where this principle has been explained in the following manner:
- D [51] It has been said in certain textbooks that the decision or judgment of a judge may fall into two parts, ie, the ratio decidendi (reason for the decision) and obiter dictum (something said by the way). *The ratio decidendi of a case is the principle of law on which a decision is based. When a judge delivers judgement in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason (ratio decidendi).* The judge may also go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an obiter dictum. *The binding part of a judicial decision is the ratio decidendi.* An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an obiter dictum may be of persuasive (as opposed to binding) authority in later cases. (Emphasis added.)
- E
- F [27] On the other hand, the words per incuriam has been interpreted by the Federal Court in *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1 as follows:
- G A few words need be said about a decision of Court of Appeal made per incuriam as mentioned above. *The words 'per incuriam' are to be interpreted narrowly to mean as per Sir Raymond Evershed, MR in Morelle v Wakeling [1955] 2 QB 379, 406 as a 'decision given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the court concerned so that in such cases, some part of the decision or some step in the reasoning on which it is based, is found on that account to be demonstrably wrong'.* (Emphasis added.)
- H
- I [28] The Federal Court in *Indira Ghandi* in answering a specific question of law, had considered the relevant facts and applied the law as can be seen from paras 142 until 181 of the grounds of judgment. All relevant statutory provisions and previous Federal Court decisions on the same issue including *Subashini* has been analysed and considered before the decision on the issue was decided. As such, the decision in *Indira Ghandi* that consent of both parents are required before the certificate of conversion to Islam can be issued, is in our view, the ratio decidendi of the case.

[29] Our view is further fortified by the statement of Tengku Maimun CJ in the Federal Court case of *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 1 MLJ 750; [2021] 2 CLJ 579 where Her Ladyship said this:

[456] *More on point is the ratio decidendi of this court in Indira Gandhi where it was held that the decision of the Registrar of Muallafs in Perak to convert minor children to Islam without the consent of the other parent is justiciable and amenable to judicial review.* (Emphasis added.)

[30] The contention by the appellant's counsel that the facts in *Indira Ghandi* is distinguishable from the present case is untenable as the main facts in both cases involves unilateral conversion of the children which is the main question for determination of the courts.

[31] In the circumstances and based on the principles of stare decisis, the High Court and this court are bound by the decision in *Indira Ghandi*.

[32] In fact, senior federal counsel from the Attorney General's Chambers, acting for the second, third and fourth respondents conceded that this court is bound by the decision in *Indira Ghandi* on the issue in question.

[33] For completeness, the appellant in his written submission also submitted that the conversion and appellant's decision to register the conversion was made on 11 May 2016 whereas *Indira Ghandi* was decided on 29 January 2018. Thus, it was submitted that the law at the material time was as decided in *Subashini* and not the decision in *Indira Ghandi*.

[34] We are of the view that this proposition is misconceived as it is trite law that the latest decision of the Federal Court supersedes its earlier decision as explained in *Dalip Bhagwan Singh's* case as follows:

If the House of Lords, and by analogy, the Federal Court, departs from its previous decision when it is right to do so in the circumstances set out above, then also by necessary implication, its decision represents the present state of the law. When two decisions of the Federal Court conflict on a point of law, the later decision therefore, for the same reasons, prevails over the earlier decision. (Emphasis added.)

CONCLUSION

[35] In the present case, it is undisputed fact that the children's conversion to Islam was without the consent of the first respondent, the father of the children and as such, the High Court judge was correct in granting an order of certiorari to quash the said conversion, the issuance of certificate of conversion and an order of mandamus to compel Pendaftar Muallaf Wilayah Persekutuan and

A Ketua Pengarah Jabatan Agama Islam to cancel the registration of the children as converts to Islam.

[36] Again we reiterate that the High Court and this court are bound by the decision of the Federal Court in *Indira Ghandi's* case by the doctrine of stare decisis.

[37] Accordingly, we dismiss both appeals with no order as to costs.

C *Both appeals dismissed with no order as to costs.*

Reported by Dzulqarnain Ab Fatar

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